

~~Ronald J. Kohut, Esq. (SBN 66463)
ronald@kohutlaw.com
Laura Kohut Hoopis, Esq. (SBN 139143)
laura@kohutlaw.com
Kristyn E. Kohut, Esq. (SBN 282040)
kristyn@kohutlaw.com
KOHUT & KOHUT LLP
600 Anton Blvd., Suite 1075
Costa Mesa, CA 92626
Telephone: (714) 384-4130
Facsimile: (714) 384-4131~~

~~Attorneys for Plaintiff ICU MEDICAL, INC.~~

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ICU MEDICAL, INC., a Delaware corporation,)	Case No.: SACV13-01878 AG
)	(DFMx)
Plaintiff,)	
)	[PROPOSED] PROTECTIVE
v.)	ORDER
)	
RYMED TECHNOLOGIES, LLC,)	
formerly known as RTI Transactions,)	
LLC, a Texas limited liability company,)	
)	
Defendant.)	
)	
)	
)	
)	

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this

1 Protective Order. This Order does not confer blanket protections on all
2 disclosures or responses to discovery, and the protection it gives from public
3 disclosure and use extends only to the specific material entitled to confidential
4 treatment under the applicable legal principles. This Order does not automatically
5 authorize the filing under seal of material designated under this Order. Instead, the
6 parties must comply with L.R. 79-5.1 if they seek to file anything under seal. This
7 Order does not govern the use at trial of material designated under this Order.

8
9 **2. DESIGNATING PROTECTED MATERIAL**

10 **2.1 Over-Designation Prohibited.** Any party or non-party who
11 designates information or items for protection under this Order as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES
13 ONLY” (a “designator”) must only designate specific material that qualifies under
14 the appropriate standards. To the extent practicable, only those parts of documents,
15 items, or oral or written communications that require protection shall be
16 designated. Designations with a higher confidentiality level when a lower level
17 would suffice are prohibited. Mass, indiscriminate, or routinized designations are
18 prohibited. Unjustified designations expose the designator to sanctions, including
19 the Court’s striking all confidentiality designations made by that designator.
20 Designation under this Order is allowed only if the designation is necessary to
21 protect material that, if disclosed to persons not authorized to view it, would cause
22 competitive or other recognized harm. Material may not be designated if it has
23 been made public, or if designation is otherwise unnecessary to protect a secrecy
24 interest. If a designator learns that information or items that it designated for
25 protection do not qualify for protection at all or do not qualify for the level of
26

1 protection initially asserted, that designator must promptly notify all parties that it
2 is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Designation under this Order
4 requires the designator to affix the applicable legend (“CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that
6 contains protected material. For testimony given in deposition or other proceeding,
7 the designator shall specify all protected testimony and the level of protection
8 being asserted. It may make that designation during the deposition or proceeding,
9 or may invoke, on the record or by written notice to all parties on or before the
10 next business day, a right to have up to 21 days from the deposition or proceeding
11 to make its designation.

12 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
13 designate does not, standing alone, waive protection under this Order. Upon timely
14 assertion or correction of a designation, all recipients must make reasonable efforts
15 to ensure that the material is treated according to this Order.

16 17 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 All challenges to confidentiality designations shall proceed under L.R. 37-1
19 through L.R. 37-4.

20 21 **4. ACCESS TO DESIGNATED MATERIAL**

22 **4.1 Basic Principles.** A receiving party may use designated material only
23 for this litigation. Designated material may be disclosed only to the categories of
24 persons and under the conditions described in this Order.

25 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
26 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the

designator, a receiving party may disclose any material designated

CONFIDENTIAL only to:

4.2.1 The receiving party's outside counsel of record in this action and employees of outside counsel of record to whom disclosure is reasonably necessary;

4.2.2 The officers, directors, and employees of the receiving party to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit A);

4.2.3 Experts retained by the receiving party's outside counsel of record to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit A);

4.2.4 The Court and its personnel;

4.2.5 Outside court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit A);

4.2.6 During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A); and

4.2.7 The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information.

4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY Material Without Further Approval. Unless permitted in writing by the designator, a receiving party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

1 **4.3.1** The receiving party's outside counsel of record in this action and
 2 employees of outside counsel of record to whom it is reasonably necessary
 3 to disclose the information;

4 **4.3.2** The Court and its personnel;

5 **4.3.3** Outside court reporters and their staff, professional jury or trial
 6 consultants, and professional vendors to whom disclosure is reasonably
 7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8 **4.3.4** The author or recipient of a document containing the material, or
 9 a custodian or other person who otherwise possessed or knew the
 10 information; and

11 **4.3.5** Experts retained by the receiving party's outside counsel of
 12 record to whom disclosure is reasonably necessary, and who have signed the
 13 Agreement to Be Bound (Exhibit A) so long as the party wishing to make
 14 such disclosure obtains the consent of the producing party's outside counsel
 15 (which consent shall not be unreasonably withheld) or, in the absence of
 16 such consent, after application to the Court demonstrating that such
 17 disclosure is necessary.

18 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
 19 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel**
 20 **or Experts.** Unless agreed to in writing by the designator:

21 **4.4.1** A party seeking to disclose to in-house counsel any material
 22 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must
 23 first make a written request to the designator providing the full name of the
 24 in-house counsel, the city and state of such counsel's residence, and such
 25 counsel's current and reasonably foreseeable future primary job duties and
 26 responsibilities in sufficient detail to determine present or potential

1 involvement in any competitive decision-making. In-house counsel are not
2 authorized to receive material designated HIGHLY CONFIDENTIAL –
3 SOURCE CODE.

4 **4.4.2** A party seeking to disclose to an expert retained by outside
5 counsel of record any information or item that has been designated HIGHLY
6 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written
7 request to the designator that (1) identifies the general categories of
8 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY information that
9 the receiving party seeks permission to disclose to the expert, (2) sets forth
10 the full name of the expert and the city and state of his or her primary
11 residence, (3) attaches a copy of the expert's current resume, (4) identifies
12 the expert's current employer(s), (5) identifies each person or entity from
13 whom the expert has received compensation or funding for work in his or
14 her areas of expertise (including in connection with litigation) in the past
15 five years, and (6) identifies (by name and number of the case, filing date,
16 and location of court) any litigation where the expert has offered expert
17 testimony, including by declaration, report, or testimony at deposition or
18 trial, in the past five years. If the expert believes any of this information at
19 (4) - (6) is subject to a confidentiality obligation to a third party, then the
20 expert should provide whatever information the expert believes can be
21 disclosed without violating any confidentiality agreements, and the party
22 seeking to disclose the information to the expert shall be available to meet
23 and confer with the designator regarding any such confidentiality
24 obligations.

25 **4.4.3** A party that makes a request and provides the information
26 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to
27

the identified in-house counsel or expert unless, within seven days of delivering the request, the party receives a written objection from the designator providing detailed grounds for the objection.

4.4.4 All challenges to objections from the designator shall proceed under L.R. 37-1 through L.R. 37-4.

5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

5.1 Subpoenas and Court Orders. This Order in no way excuses non-compliance with a lawful subpoena or court order. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the designator an opportunity to protect its confidentiality interests in the court where the subpoena or order issued.

5.2 Notification Requirement. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE, that party must:

5.2.1 Promptly notify the designator in writing. Such notification shall include a copy of the subpoena or court order;

5.2.2 Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

5.2.3 Cooperate with all reasonable procedures sought by the designator whose material may be affected.

1 **5.3 Wait For Resolution of Protective Order.** If the designator timely
 2 seeks a protective order, the party served with the subpoena or court order shall not
 3 produce any information designated in this action as CONFIDENTIAL, HIGHLY
 4 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the
 5 court where the subpoena or order issued, unless the party has obtained the
 6 designator’s permission. The designator shall bear the burden and expense of
 7 seeking protection of its confidential material in that court.

8
 9 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 11 designated material to any person or in any circumstance not authorized under this
 12 Order, it must immediately (1) notify in writing the designator of the unauthorized
 13 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
 14 designated material, (3) inform the person or persons to whom unauthorized
 15 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
 16 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

17
 18 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR**
 19 **OTHERWISE PROTECTED MATERIAL**

20 When a producing party gives notice that certain inadvertently produced
 21 material is subject to a claim of privilege or other protection, the obligations of the
 22 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
 23 This provision is not intended to modify whatever procedure may be established in
 24 an e-discovery order that provides for production without prior privilege review
 25 pursuant to Federal Rule of Evidence 502(d) and (e).

1 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
 2 hearing transcripts, legal memoranda, correspondence, deposition and trial
 3 exhibits, expert reports, attorney work product, and consultant and expert work
 4 product, even if such materials contain designated material. Any such archival
 5 copies remain subject to this Order.

6 7 **10. TENNESSEE ACTION**

8 ICU Medical, Inc. and RyMed Technologies, Inc. were parties to a lawsuit
 9 pending in the United States District Court for the Middle District of Tennessee
 10 (Civil Action No. 3:10-cv-01067 KHS) (the “Tennessee Action”). During the
 11 course of the Tennessee Action, the Court entered a Protective Order (Exhibit B) to
 12 govern the disclosure of certain proprietary and confidential information.

13 In the interest of judicial and party economy, the parties to this action (with
 14 the consent of RyMed Technologies, Inc. as noted below) hereby agree that all
 15 documents, information and depositions, previously exchanged in the Tennessee
 16 Action and designated pursuant to the Protective Order shall continue to remain
 17 available for use by the parties and their counsel consistent with the terms of this
 18 Protective Order. The parties further agree that the fact of the parties having made
 19 the accommodation set out herein, including but not limited to RyMed
 20 Technologies, Inc.’s consent hereto, shall not be used against ICU Medical, Inc.,
 21 RyMed Technologies, Inc., or RyMed Technologies, LLC in any manner
 22 whatsoever.

23 **IT IS SO ORDERED.**

24 **DOUGLAS F. McCORMICK**

25 DATED: March 19, 2014

26 _____
 27 United States District Judge/Magistrate Judge
 28 _____

Dated: March 12, 2014

Respectfully submitted,

/s/ Ronald J. Kohut

RONALD J. KOHUT

(SBN 66463)

KRISTYN E. KOHUT

(SBN 282040)

Kohut & Kohut LLP

600 Anton Blvd., Suite 1075

Costa Mesa, CA 92626

Telephone: (714) 384-4130

Facsimile: (714) 384-4131

Email: ron@kohutlaw.com

Email: kristyn@kohutlaw.com

Attorneys for Plaintiff

ICU MEDICAL, INC.

/s/ Samuel P. Funk

SAMUEL P. FUNK

(admitted *pro hac vice*)

MICHAEL G. ABELOW

(admitted *pro hac vice*)

RYAN T. HOLT

(admitted *pro hac vice*)

Sherrard & Roe, PLC

150 Third Avenue South, Suite 1100

Nashville, Tennessee 37201

Telephone: (615) 742-4200

Facsimile: (615) 742-4539

Email: sfunk@sherrardroe.com

Email: mabelow@sherrardroe.com

Email: rholt@sherrardroe.com

VAN-DZUNG NGUYEN

(SBN 222832)

Crowell & Moring LLP

3 Park Plaza, 20th Floor

Irvine, CA 92614-8505

Telephone: (949) 263-8400

Facsimile: (949) 263-8414

Email: vnguyen@crowell.com

Attorneys for Defendant

RYMED TECHNOLOGIES, LLC

APPROVED AS TO SECTION 10:

RYMED TECHNOLOGIES, INC.

By: 

Its: President & CEO

EXHIBIT A

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Protective Order that was issued
by the United States District Court for the Central District of California on
_____ [date] in the case of SACV13-01878 AG (DFMx). I agree to comply with
and to be bound by all the terms of this Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment for contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Protective Order to any person or
entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing this Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____